

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-003106

02/18/2010

HON. SAM J. MYERS

CLERK OF THE COURT
L. Firriello
Deputy

KEITH DEERING, et al.

LANCE R BROBERG

v.

GARY WHITING, et al.

GREGORY G MCGILL

MINUTE ENTRY

Following oral argument, the Court took under advisement Plaintiffs' Application for Temporary Restraining Order and Cheyenne Mountain Games, Inc. ("CMG") and Cheyenne Mountain Entertainment, Inc.'s ("CME") Motion to Dismiss. The Court has considered the Motions of the parties, the authorities cited, and the arguments of counsel. The Court has also considered the arguments of Defendant Gary Whiting.

Following oral argument, the Court received a Voluntary Petition filed by CME in the US Bankruptcy Court on February 12, 2010 in case number 10-03632. By separate minute entry, the Court will enter an automatic stay as to CME. Because the Court has no evidence that a petition for bankruptcy has been filed as to CMG, the Court will proceed as to CMG only.

CME and CMG seek dismissal of this case based on Plaintiffs' non-compliance with A.R.S. §10-742. Plaintiffs argue that A.R.S. §10-747 mandates that Nevada law, rather than Arizona law, controls this proceeding. The Court finds that the instant proceeding is a derivative proceeding in the right of a foreign corporation; thus, A.R.S. §10-747 dictates that the matters concerning derivative proceedings are governed by the laws of the jurisdiction of incorporation, i.e. Nevada. As a result, the requirements of A.R.S. §10-742 do not apply to Plaintiffs and are

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not grounds for dismissal. Similarly, the standing argument pursuant to A.R.S. §10-741 raised in the Motion to Dismiss must also fail.

As to Plaintiffs' request for a TRO, the Court finds insufficient grounds to remove Mr. Whiting and Mr. Safiulla from the board of directors; the Court similarly finds insufficient grounds to appoint independent directors to the board of directors.

As to Plaintiffs' alternative request for the appointment of a receiver; the Court finds that Plaintiffs have established sufficient evidence pursuant to A.R.S. §12-1241 and Rule 66, ARCP, to warrant the appointment of a receiver to protect and preserve the corporation and its assets.

Counsel for Plaintiffs shall obtain a total of two names of proposed receivers from counsel for CMG and Mr. Whiting (not two names each; a total of two names). Counsel for Plaintiffs shall then submit to the Court an alphabetical list totaling four names (two submitted by Plaintiffs). Any submitted names may include qualifications of a proposed receiver, but shall not indicate the submitting party. The names shall be submitted to the Court not later than **Thursday, February 25, 2010**. The Court will then select one name to serve as a receiver and require Plaintiffs to post a bond in the amount of \$10,000.

Because the Court is granting relief pursuant to Rule 66, the Court will vacate the Preliminary Injunction Hearing set March 15 and 17, 2010; injunctive relief is not available pursuant to Rule 66(a) if a receiver has been appointed.

IT IS ORDERED denying CMG's Motion to Dismiss.

IT IS FURTHER ORDERED denying Plaintiffs' Application for a Temporary Restraining Order.

IT IS FURTHER ORDERED granting Plaintiffs' alternative request for relief and appointing a receiver for CMG.

IT IS FURTHER ORDERED that the parties comply with the Court's above instructions regarding the submission of names of proposed receivers.

IT IS FURTHER ORDERED vacating the Preliminary Injunction Hearing set March 15 and 17, 2010.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>